

LAURA E. DUFFY
United States Attorney
JOSEPH J.M. ORABONA
Assistant U.S. Attorney
DAVID P. FINN
Special Assistant U.S. Attorney
California State Bar Nos. 223317/249247
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-8893
Telephone: (619) 546-7951
Facsimile: (619) 546-0510
Email: joseph.orabona@usdoj.gov

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICARDO LOPEZ-MUNGUIA,

Defendant.

Criminal Case No. 13CR2295-LAB

Date: August 19, 2013
Time: 2:00 p.m.

The Honorable Larry A. Burns

**UNITED STATES' RESPONSE IN
OPPOSITION TO DEFENDANT'S
MOTIONS TO**

**(1) TRANSFER CASE TO LAB;
(2) COMPEL DISCOVERY AND
PRESERVE EVIDENCE; AND
(3) LEAVE TO FILE FURTHER
MOTIONS**

**TOGETHER WITH STATEMENT
OF FACTS, MEMORANDUM OF
POINTS AND AUTHORITIES**

The plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Laura E. Duffy, United States Attorney, Joseph J.M. Orabona, Assistant United States Attorney, and David P. Finn, Special Assistant U.S. Attorney, hereby files its Response in Opposition to Defendant's above-referenced Motions. This Response in Opposition is based upon the files and records of the case, together with the attached statement of facts and memorandum of points and authorities.

I**STATEMENT OF THE CASE**

On June 20, 2013, a federal grand jury in the Southern District of California returned a sealed Indictment charging Defendant with harboring illegal aliens for financial gain, in violation of 8 U.S.C. § 1324(a)(1)(A)(iii) and (B)(i), and aggravated identity theft, in violation of 18 U.S.C. § 1028A. On June 27, 2013, Defendant was arrested on the outstanding warrant and was arraigned on the Indictment. Defendant pled not guilty to the charges. The Court will hear motions on August 19, 2013. The United States hereby files its response in opposition to Defendant's motions.

II**STATEMENT OF FACTS**

Defendant was the primary manager responsible for the unlawful hiring and retention of undocumented aliens at a local janitorial company in San Diego County. Defendant began his employment with the company in May 2006, and continued working there until his arrest in July 2012.¹ During his employment with the company, Defendant hired and aided and abetting the hiring of undocumented aliens by falsifying immigration records using the Social Security numbers of United States citizens and Legal Permanent Residents in order to defraud Homeland Security into believing the company was hiring legal workers. As part of fraud, Defendant allowed several of the undocumented aliens to use Defendant's sister's Social Security number in order to obtain employment at the company.

A search warrant was executed on June 28, 2013. The janitorial company was not aware of the pending criminal investigation until the search warrant was executed. The charges pending against Defendant are related to the ongoing criminal investigation of the janitorial company.

¹ Defendant is a previously deported alien with a drug trafficking conviction from the 1980s. In 1996, Defendant assumed the identity of his deceased cousin and used that identity to gain employment at the janitorial company in May 2006. In July 2012, Defendant attempted to enter the United States using his deceased cousin's identity. He was charged with the crimes of attempted entry, making a false claim to U.S. citizenship, and voter fraud. Defendant pled guilty to the charges and was sentenced on June 24, 2013 to serve 5 years probation.

III

**THE UNITED STATES' RESPONSE IN OPPOSITION
TO DEFENDANT'S MOTIONS ALONG WITH A
MEMORANDUM OF POINTS AND AUTHORITIES**

A. MOTION TO TRANSFER THE CASE

Defendant made a motion to transfer the case. This motion is moot. The United States filed a Notice of Related Case on August 1, 2013, and the case was transferred to the assigned District Judge as it was related to another case that was considered "pending" under the Local Rules. As such, this motion may be denied as moot.

B. MOTIONS TO COMPEL DISCOVERY/PRESERVE EVIDENCE

As of the date of this motion response, the United States has produced over 300 pages of discovery (including agent reports, photos of material witnesses, surveillance photographs) and three DVDs of the statements of the three material witnesses. On August 15, 2013, the United States learned that counsel for Defendant has a conflict of interest based upon representation of another current client, and Defendant will be requesting a change of counsel. As such, there is additional discovery that will be produced once the Court has resolved the conflict and appointed conflict-free counsel.

The United States will continue to comply with its obligations under Brady v. Maryland, 373 U.S. 83 (1963), the Jenks Act (18 U.S.C. § 3500 et seq.), and Rule 16 of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."). At this point the United States has received **no** reciprocal discovery. In view of the below-stated position of the United States concerning discovery, the United States requests the Court issue no orders compelling specific discovery by the United States at this time.

1. Defendant's Statements

The United States will comply with Fed. R. Crim. P. 16(a)(1)(A) and 16(a)(1)(B). The United States has produced all of Defendant's statements that are known to the undersigned as of the date of this response. If the United States discovers additional oral or written statements that require disclosure under Fed. R. Crim. P. 16(a)(1)(A) or (B), such statements will be provided to Defendant.

1 The United States recognizes its obligations under Fed. R. Crim. P. 16(a)(1)(A)
 2 to disclose “the substance of any relevant oral statement made by the defendant, before
 3 or after arrest, in response to interrogation by a person the defendant knew was a
 4 government agent if the government intends to use the statement in trial.” However, the
 5 United States is not required under Fed. R. Crim. P. 16 to deliver oral statements, if any,
 6 made by a defendant to persons who are not United States’ agents. Nor is the United
 7 States required to produce oral statements, if any, voluntarily made by a defendant to
 8 United States’ agents. See United States v. Hoffman, 794 F.2d 1429, 1432 (9th Cir.
 9 1986); United States v. Stoll, 726 F.2d 584, 687-88 (9th Cir. 1984). Fed. R. Crim. P. 16
 10 does not require the United States to produce statements by Defendant that it does not
 11 intend to use at trial. Moreover, the United States will not produce rebuttal evidence in
 12 advance of trial. See United States v. Givens, 767 F.2d 574, 584 (9th Cir. 1984).

13 **2. Arrest Reports, Notes and Dispatch Tapes**

14 As discussed above, the United States will comply with comply with Fed. R.
 15 Crim. P. 16(a)(1)(A) and (B). The United States has turned over a number of
 16 investigative reports, including those which disclose the substance of Defendant’s oral
 17 statements made in response to routine questioning by United States’ law enforcement
 18 officers. If additional reports by United States’ agents come to light, the United States
 19 will supplement its discovery.

20 The United States objects to Defendant’s request for an order for production of
 21 any rough notes of United States’ agents that may exist. Production of these notes, if any
 22 exist, is unnecessary because they are not “statements” within the meaning of the Jencks
 23 Act unless they contain a substantially verbatim narrative of a witness’ assertions and
 24 they have been approved or adopted by the witness. See discussion infra discussing
 25 Jencks Act; see also United States v. Alvarez, 86 F.3d 901, 906 (9th Cir. 1996); United
 26 States v. Bobadilla-Lopez, 954 F.2d 519, 522 (9th Cir. 1992). The production of agents’
 27 notes is not required under Fed. R. Crim. P. 16 because the United States has “already
 28 provided defendant with copies of the formal interview reports prepared therefrom.”

1 United States v. Griffin, 659 F.2d 932, 941 (9th Cir. 1981). In addition, the United
 2 States considers the rough notes of its agents to be United States' work product, which
 3 Fed. R. Crim. P. 16(a)(2) specifically exempts from disclosure.

4 **3. Brady Material**

5 The United States has complied and will continue to comply with its obligations
 6 under Brady v. Maryland, 373 U.S. 83 (1963). Under Brady and United States v. Agurs,
 7 427 U.S. 97 (1976), the government need not disclose "every bit of information that
 8 might affect the jury's decision." United States v. Gardner, 611 F.2d 770, 774-75 (9th
 9 Cir. 1980). The standard for disclosure is materiality. Id. "Evidence is material under
 10 Brady only if there is a reasonable probability that the result of the proceeding would
 11 have been different had it been disclosed to the defense." United States v. Antonakeas,
 12 255 F.3d 714, 725 (9th Cir. 2001).

13 The United States will also comply with its obligations to disclose exculpatory
 14 evidence under Brady v. Maryland, 373 U.S. 83 (1963). Furthermore, impeachment
 15 evidence may constitute Brady material "when the reliability of the witness may be
 16 determinative of a criminal defendant's guilt or innocence." United States v. Blanco,
 17 392 F.3d 382, 387 (9th Cir. 2004) (internal quotation marks omitted). However, the
 18 United States will not produce rebuttal evidence in advance of trial. See United States
 19 v. Givens, 767 F.2d 574, 584 (9th Cir. 1984).

20 Brady does not, however, require that the United States open its file for
 21 discovery. See United States v. Henke, 222 F.3d 633, 642-44 (9th Cir. 2000) (per
 22 curiam). Under Brady, the United States is not required to provide: (1) neutral,
 23 irrelevant, speculative, or inculpatory evidence (see United States v. Smith, 282 F.3d
 24 758, 770 (9th Cir. 2002)); (2) evidence available to the defendant from other sources (see
 25 United States v. Bracy, 67 F.3d 1421, 128-29 (9th Cir. 1995)); (3) evidence that the
 26 defendant already possess (see United States v. Mikaelian, 168 F.3d 380, 389-90) (9th
 27 Cir. 1999), amended by 180 F.3d 1091 (9th Cir. 1999)); or (4) evidence that the United
 28 States Attorney could not reasonably be imputed to have knowledge or control over (see
United States v. Hanson, 262 F.3d 1217, 1234-35 (11th Cir. 2001)).

1 **5. Any Information That May Result in a Lower Sentence**

2 Defendant claims that the United States must disclose information affecting
3 Defendant's sentencing guidelines because such information is discoverable under Brady
4 v. Maryland, 373 U.S. 83 (1963). The United States respectfully contends that it has no
5 such disclosure obligation under Brady.

6 The United States is not obligated under Brady to furnish a defendant with
7 information which he already knows. See United States v. Taylor, 802 F.2d 1108, 1118
8 n.5 (9th Cir. 1986). Brady is a rule of disclosure, and therefore, there can be no violation
9 of Brady if the evidence is already known to the defendant. In such case, the United
10 States has not suppressed the evidence and consequently has no Brady obligation. See
11 United States v. Gaggi, 811 F.2d 47, 59 (2d Cir. 1987).

12 But even assuming Defendant does not already possess the information about
13 factors which might affect his guideline range, the United States would not be required
14 to provide information bearing on Defendant's mitigation of punishment until after
15 Defendant's conviction or plea of guilty and prior to his sentencing date. See United
16 States v. Juvenile Male, 864 F.2d 641, 647 (9th Cir. 1988) ("No [Brady] violation occurs
17 if the evidence is disclosed to the defendant at a time when the disclosure remains in
18 value."). Accordingly, Defendant's demand for this information is unwarranted.

19 **5. Defendant's Prior Record**

20 The United States has will provide Defendant with a copy of his criminal record
21 and related court documents, in accordance with Fed. R. Crim. P. 16(a)(1)(D). In
22 particular, the United States requests the Court's permission to provide the Presentence
23 Report to Defendant from his prior case, 12CR3188-LAB.

24 **6. Any Proposed 404(b) or 609 Evidence**

25 The United States hereby provides notice to Defendant of its intent to introduce
26 Defendant's prior instances where Defendant was a deported alien found in the United
27 States under Rule 404(b). In particular, the United States may introduce such
28 occurrences in 2002, 2003, 2008, and 2010. In addition, should Defendant testify at trial,

1 the United States intends to use Defendant's prior attempted robbery and deported alien
2 convictions as impeachment under Rule 609.

3 The United States has complied and will continue to comply with its obligations
4 under Rules 404(b) and 609 of the Federal Rules of Evidence ("Fed. R. Evid."). The
5 United States has already provided Defendant with a copy of his criminal record, in
6 accordance with Fed. R. Crim. P. 16 (a)(1)(D). Furthermore, pursuant to Fed. R. Evid.
7 404(b) and 609, the United States will provide Defendant with reasonable notice before
8 trial of the general nature of the evidence of any extrinsic acts that it intends to use at
9 trial. See Fed. R. Evid. 404(b), advisory committee's note ("[T]he Committee opted for
10 a generalized notice provision which requires the prosecution to appraise the defense of
11 the general nature of the evidence of extrinsic acts. The Committee does not intend that
12 the amendment will supercede other rules of admissibility or disclosure[.]").

13 7. Evidence Seized

14 The United States has complied and will continue to comply with Fed. R. Crim.
15 P. 16(a)(1)(E).

16 8. Request for Preservation of Evidence

17 The United States will preserve all evidence pursuant to an order issued by this
18 Court. The United States objects to an overbroad request to preserve all physical
19 evidence. The United States recognizes its obligation to preserve evidence "that might
20 be expected to play a significant role in the suspect's defense." California v. Trombetta,
21 467 U.S. 479, 488 (1984). To require preservation by the United States, such evidence
22 must (1) "possess an exculpatory value that was apparent before the evidence was
23 destroyed," and (2) "be of such a nature that the defendant would be unable to obtain
24 comparable evidence by other reasonably available means." Id. at 489; see also Cooper
25 v. Calderon, 255 F.3d 1104, 1113-14 (9th Cir. 2001).

26 The United States will make every effort to preserve evidence it deems relevant
27 and material to this case. Any failure to gather and preserve evidence, however, would
28 not violate due process absent bad faith by the United States that results in actual

1 prejudice to the Defendant. See Illinois v. Fisher, 504 U.S. 544 (2004); Arizona v.
 2 Youngblood, 488 U.S. 51, 57-58 (1988); United States v. Rivera-Relle, 322 F.3d 670
 3 (9th Cir. 2003); Downs v. Hoyt, 232 F.3d 1031, 1037-38 (9th Cir. 2000).

4 **9. Henthorn Materials**

5 The United States has complied and will continue to comply with United States
 6 v. Henthorn, 931 F.2d 29 (9th Cir. 1991) by requesting that all federal agencies involved
 7 in the criminal investigation and prosecution review the personnel files of the federal law
 8 enforcement inspectors, officers, and special agents whom the United States intends to
 9 call at trial and disclose information favorable to the defense that meets the appropriate
 10 standard of materiality. See United States v. Booth, 309 F.3d 566, 574 (9th Cir. 2002)
 11 (citing United States v. Jennings, 960 F.2d 1488, 1489 (9th Cir. 1992)). If the
 12 materiality of incriminating information in the personnel files is in doubt, the information
 13 will be submitted to the Court for an in camera inspection and review.

14 Defendant's request that the specific prosecutor in this case review or oversee
 15 the personnel files is unwarranted and unnecessary. Henthorn expressly provides that it
 16 is the "government," not the prosecutor, which must review the personnel files.
 17 Henthorn, 931 F.2d at 30- 31. Accordingly, the United States will utilize its typical
 18 practice for review of these files, which involves requesting designated representatives
 19 of the relevant agencies to conduct the reviews. The United States opposes the request
 20 for an order that the prosecutor personally review or oversee the review of personnel
 21 files.

22 **10. Tangible Objects**

23 As previously discussed in response 7 above, the United States has complied and
 24 will continue to comply with Fed. R. Crim. P. 16(a)(1)(E) in allowing Defendant an
 25 opportunity, upon reasonable notice, to examine, inspect, and copy all evidence seized
 26 and/or tangible objects that are within the possession, custody, or control of the United
 27 States, and that are either material to the preparation of Defendant's defense, or are
 28 intended for use by the United States as evidence during its case-in-chief, or were

1 obtained from or belongs to Defendant. However, the United States need not produce
 2 rebuttal evidence in advance of trial. See United States v. Givens, 767 F.2d 574, 584
 3 (9th Cir. 1984).

4 **11. Expert Witness**

5 The United States has complied and will continue to comply with Fed. R. Crim.
 6 P. 16(a)(1)(G) and provide Defendant with notice and a written summary of any expert
 7 testimony that the United States intends to use during its case-in-chief at trial under Fed.
 8 R. Evid. 702, 703, or 705.

9 **12. Impeachment Evidence**

10 The United States incorporates by reference Response 3 above.

11 **13. Evidence of Criminal Investigation of Any Government Witness**

12 The United States incorporates by reference Response 3 above. The United
 13 States objects to Defendant's overbroad request for evidence of criminal investigations
 14 by federal, state, or local authorities into prospective government witnesses. The United
 15 States is unaware of any rule of discovery or Ninth Circuit precedent that entitles
 16 Defendant to any and all evidence that a prospective government witness is under
 17 investigation by federal, state or local authorities. Moreover, as discussed above, the
 18 United States has no obligation to disclose information not within its possession, custody
 19 or control. See United States v. Gatto, 763 F.2d 1040, 1048 (9th Cir. 1985); United
 20 States v. Aichele, 941 F.2d 761, 764 (9th Cir. 1991) (California state prisoner's files
 21 outside of federal prosecutor's possession); United States v. Chavez-Vernaza, 844 F.2d
 22 1368, 1375 (9th Cir. 1987) (the federal government had no duty to obtain from state
 23 officials documents of which it was aware but over which it had no actual control); cf.
 24 Beaver v. United States, 351 F.2d 507 (9th Cir. 1965) (Jencks Act refers to "any
 25 statement" of a witness produced by United States which is in possession of United
 26 States and does not apply to a recording in possession of state authorities).

27 The United States recognizes and will comply with its obligations under the rules
 28 of discovery and Ninth Circuit precedent to disclose exculpatory and impeachment

1 information. The United States also recognizes its obligation to provide information--if
 2 any exists--related to the bias, prejudice or other motivation of United States' trial
 3 witnesses, as mandated in Napue v. Illinois, 360 U.S. 264 (1959), when it files its trial
 4 memorandum.

5 **14. Evidence of Bias or Motive to Lie**

6 The United States incorporates by reference Response 3 above.

7 **15. Evidence re: Perception, Recollection, Ability to Communicate**

8 The United States incorporates by reference Response 3 above.

9 **16. Witness Addresses**

10 The United States objects to Defendant's request for witness addresses and phone
 11 numbers. Defendant is not entitled to the production of addresses or phone numbers of
 12 possible witnesses for the United States. See United States v. Hicks, 103 F.3d 837, 841
 13 (9th Cir. 1996); United States v. Thompson, 493 F.2d 305, 309 (9th Cir. 1977), cert
 14 denied, 419 U.S. 834 (1974). None of the cases cited by Defendant, nor any rule of
 15 discovery, requires the United States to disclose witness addresses. There is no
 16 obligation for the United States to provide addresses of witnesses that the United States
 17 intends to call or not call. Therefore, the United States will not comply with this request.

18 The United States has provided and will continue to provide Defendant with the
 19 reports containing the names of the agents involved in the apprehension and interviews
 20 of Defendant. A defendant in a non-capital case, however, has no right to discover the
 21 identity of prospective government witnesses prior to trial. See Weatherford v. Bursey,
 22 429 U.S. 545, 559 (1977); United States v. Dishner, 974 F.2d 1502, 1522 (9th Cir. 1992)
 23 (citing United States v. Steel, 759 F.2d 706, 709 (9th Cir. 1985)). Nevertheless, in its
 24 trial memorandum, the United States will provide Defendant with a list of all witnesses
 25 whom it intends to call in its case-in-chief, although delivery of such a witness list is not
 26 required. See United States v. Discher, 960 F.2d 870 (9th Cir. 1992).

27 The United States also objects to any request that the United States provide a list
 28 of every witness to the crimes charged who will not be called as a government witness.

1 “There is no statutory basis for granting such broad requests,” and such a request “far
2 exceed[s] the parameters of Rule 16(a)(1)(C).” United States v. Yung, 97 F. Supp.2d 24,
3 36 (D.D.C. 2000) (quoting United States v. Boffa, 513 F. Supp. 444, 502 (D. Del. 1980)).

4 **17. Names of Witnesses Favorable to Defendant**

5 The United States incorporates by reference Responses 3 and 16 above.

6 **18. Statements Relevant to the Defense**

7 The United States incorporates by reference Response 3 above. The United
8 States objects to the request for “any statement relevant to any possible defense or
9 contention” as overbroad and not required by any discovery rule or Ninth Circuit
10 precedent. Therefore, the United States will only disclose relevant statements made by
11 Defendant pursuant to this request.

12 **19. Jencks Act Material**

13 The United States will fully comply with its discovery obligations under the
14 Jencks Act. For purposes of the Jencks Act, a “statement” is (1) a written statement
15 made by the witness and signed or otherwise adopted or approved by him, (2) a
16 substantially verbatim, contemporaneously recorded transcription of the witness’ oral
17 statement, or (3) a statement by the witness before a grand jury. See 18 U.S.C. § 3500(e).
18 Notes of an interview only constitute statements discoverable under the Jencks Act if the
19 statements are adopted by the witness, as when the notes are read back to a witness to see
20 whether or not the government agent correctly understood what the witness said. United
21 States v. Boshell, 952 F.2d 1101, 1105 (9th Cir. 1991) (citing Goldberg v. United States,
22 425 U.S. 94, 98 (1976)). In addition, rough notes by a government agent “are not
23 producible under the Jencks Act due to the incomplete nature of the notes.” United
24 States v. Cedano-Arellano, 332 F.3d 568, 571 (9th Cir. 2004).

25 Production of this material need only occur after the witness making the Jencks
26 Act statements testifies on direct examination. See United States v. Robertson, 15 F.3d
27 862, 873 (9th Cir. 1994). Indeed, even material that is potentially exculpatory (and
28 therefore subject to disclosure under Brady) need not be revealed until such time as the
witness testifies on direct examination if such material is contained in a witness’s Jencks

1 Act statements. See United States v. Bernard, 623 F.2d 551, 556 (9th Cir. 1979).
 2 Accordingly, the United States reserves the right to withhold Jencks Act statements of
 3 any particular witness it deems necessary until after they testify.

4 **20. Giglio and Agreements Between Government and Witnesses**

5 The United States incorporates by reference Response 3 above. The United
 6 States will comply with its obligations to disclose impeachment evidence under Giglio
 7 v. United States, 405 U.S. 150 (1972). Moreover, the United States will disclose
 8 impeachment evidence, if any exists, when it files its trial memorandum, although it is
 9 not required to produce such material until after its witnesses have testified at trial or at
 10 a hearing. See United States v. Bernard, 623 F.2d 551, 556 (9th Cir. 1979).

11 The United States recognizes its obligation to provide information related to the
 12 bias, prejudice or other motivation of United States' trial witnesses as mandated in
 13 Napue v. Illinois, 360 U.S. 264 (1959). The United States will provide such
 14 impeachment material in its possession, if any exists, at the time it files its trial
 15 memorandum. At this time, the United States is unaware of any prospective witness that
 16 is biased or prejudiced against Defendant or that has a motive to falsify or distort his or
 17 her testimony. The United States is unaware of any evidence that any United States
 18 witness' ability to perceive, recollect, communicate or tell the truth is impaired.

19 With respect to Defendant's request for agreements between the United States
 20 and Witnesses, the United States objects to this overbroad request. Defendant cites no
 21 authority – rule of procedure or case law – to support his request. As such, the United
 22 States will comply with its obligations as noted infra Response 22.

23 **21. Agreements Between Government and Witnesses**

24 The United States incorporates by reference Responses 3 and 20 above and
 25 Response 22 below.

26 **22. Informants and Cooperating Witnesses**

27 Defendant incorrectly asserts that Roviaro v. United States, 353 U.S. 52 (1957),
 28 establishes a per se rule that the United States must disclose the identity and location of

1 confidential informants used in a case. Rather, the Supreme Court held that disclosure
 2 of an informer's identity is required only where disclosure would be relevant to the
 3 defense or is essential to a fair determination of a cause. Id. at 60-61. Moreover, in
 4 United States v. Jones, 612 F.2d 453 (9th Cir. 1979), the Ninth Circuit held:

5 The trial court correctly ruled that the defense had no right to pretrial
 6 discovery of information regarding informants and prospective
 7 government witnesses under the Federal Rules of Criminal Procedure,
 the Jencks Act, 18 U.S.C. § 3500, or Brady v. Maryland, 373 U.S. 83, 83
 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

8 Id. at 454. As such, the United States is not obligated to make such a disclosure, if there
 9 is in fact anything to disclose, at this point in the case.

10 If there is a confidential informant involved in this case, the Court may, in some
 11 circumstances, be required to conduct an in-chambers inspection to determine whether
 12 disclosure of the informant's identity is required under Roviaro. See United States v.
 13 Ramirez-Rangel, 103 F.3d 1501, 1508 (9th Cir. 1997). That said, the United States is
 14 unaware of the existence of an informant or any cooperating witnesses in this case. The
 15 United States is also unaware of any agreements between the United States and potential
 16 witnesses.

17 **23. Bias by Informants or Cooperating Witnesses**

18 The United States incorporates by reference Responses 3, 20, 21 and 22 above.

19 **24. Personnel Records of Officers Involved in Arrest**

20 As discussed supra Part III.A.9, the United States will instruct all relevant
 21 agencies to review the personnel files of government witnesses for information
 22 pertaining to dishonesty or impeachment. Defendant has not cited any authority that
 23 requires the United States to produce "citizen complaints and other related internal
 24 affairs documents." [Def. Motion at 11.] The case cited by Defendant, Pitchess v.
 25 Superior Court, 11 Cal.3d 531, 539 (1974) has been superceded by statute. See Fagan
 26 v. Superior Court, 111 Cal. App.4th 607 (2003). Moreover, Pitchess involved a criminal
 27 case in which a defendant who claimed to have acted in self-defense sought evidence as
 28 to the police officers' use of force on previous occasions. Pitchess, 11 Cal. 3d at 534,

1 535. Pitchess is simply inapplicable to Defendant's case.

2 **25. TECS Reports**

3 The United States also objects to providing Defendant with complete vehicle and
4 pedestrian crossing reports from the Treasury Enforcement Communications System
5 ("TECS"). TECS reports are not subject to Fed. R. Crim. P. 16(c) because the reports
6 are neither material to the preparation of the defense, nor intended for use by the United
7 States as evidence during its case-in-chief. The TECS reports are not Brady material
8 because the TECS reports do not present any material exculpatory information or any
9 evidence favorable to Defendant that is material to guilt or punishment. This case
10 involves harboring illegal aliens and aggravated identity theft. Defendant must articulate
11 how he believes that the TECS reports are discoverable and relevant to these charges.

12 **26. Reports of Scientific Tests or Examinations**

13 The United States will provide Defendant with any scientific tests or
14 examinations, in accordance with Fed. R. Crim. P. 16(a)(1)(F).

15 **27. Brady Information**

16 The United States incorporates by reference Responses 3 above.

17 **28. Residual Request**

18 As indicated, the United States will comply with its discovery obligations in a
19 timely manner.

20 **C. LEAVE TO FILE FURTHER MOTIONS**

21 The United States does not oppose this motion provided that it is based upon
22 discovery that was not available to the defense at the time of the motion hearing
23 scheduled for August 19, 2013. Given that Defendant does not have conflict-free
24 counsel, it is expected that additional motions may be filed.

25 //

26 //

27 //

28 //

IV

CONCLUSION

For the foregoing reasons, the United States requests the Court deny Defendant's Motions to Transfer the Case (moot), Compel Discovery and Preserve Evidence, and Grant Leave to File Further Motions, unless unopposed.

DATED: August 15, 2013.

Respectfully submitted,

LAURA E. DUFFY
United States Attorney

/s/ Joseph J.M. Orabona
JOSEPH J.M. ORABONA
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Plaintiff,

v.

RICARDO LOPEZ-MUNGUIA,

Defendant.

Criminal Case No. 13CR2295-LAB

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that:

I, Joseph J.M. Orabona, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of the **United States' Response in Opposition** to Defendant's Motions to Transfer Case, Compel Discovery and Preserve Evidence and Grant Leave to File Further Motions; together with the separately captioned Statement of Facts and Memorandum of Points and Authorities on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Bridget Kennedy
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101
Tel: (619) 234-8467
Fax: (619) 234-2666
Email: bridget_kennedy@fd.org
Lead Attorney for Defendant

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 15, 2013.

/s/ Joseph J.M. Orabona
JOSEPH J.M. ORABONA
Assistant United States Attorney